

### **Remarks**

Claims 1, 3-20, 22-44, 46-48, 50, 51, 53, 56 and 58 are pending in the above-identified patent application. With this Submission, claims 1, 27, 29, 35, 53, and 58 are amended, claim 14 is canceled, and new claim 59 is added. Upon entry of the current amendments claims 1, 3-13, 15-20, 22-44, 46-48, 50, 51, 53, 56, 58, and 59 are pending.

No fee is believed to be due for adding dependent claim 59 because dependent claim 14 was previously paid for and claim 14 is canceled with this Submission. However, if any fee(s) are required for adding claim 59, please charge all of the appropriate fee(s) to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

Applicant submits that the claim amendments are fully supported by the application as originally filed (discussed below) and that such amendments do not present new matter.

Applicant respectfully requests reconsideration and further examination of the application in view of the amendments above and remarks below.

### **Statement of Common Ownership**

The cited reference, U.S. Pat. No. 6,436,458 (Kuechle et al.) and the claimed invention of the above-identified patent application were both assigned to The Pillsbury Company, or were subject to an obligation of assignment to The Pillsbury Company, at the time the claimed invention of the above-identified patent application was made. See, e.g., MPEP 706.02(I)(2)(II).

### **Claim Rejections Under 35 U.S.C. §103**

Claims 1, 3-20, 22-44, 46-48, 50, 51, 53, 56 and 58 stand rejected in the outstanding Final Office Action under 35 U.S.C. §103(a) as being unpatentable over Kuechle et al. (U.S. Pat. No. 6,436,458) in view of Gulstad et al. (U.S. Pat. No. 3,767,421).

The rejection cites the Kuechle et al. reference as partial basis for the rejection of claims 1, 3-20, 22-44, 46-48, 50, 51, 53, 56 and 58 under 35 U.S.C. §103. The Kuechle et al. reference has an issue date of August 20, 2002. The present patent application has a filing date of August 31, 2001, which is before the issue date of the Kuechle et al. reference, making the Kuechle et al. reference prior art only under 35 U.S.C. §102(e).

As discussed above in the Statement of Common Ownership, the Kuechle et al. reference and the claimed invention of the above-identified patent application were commonly owned at the time the claimed invention of the above-identified patent application was made.

With such common ownership, the Kuechle et al. reference, qualifying as prior art only under §102(e), is not available as prior art under section 103(c) in a determination of obviousness of the pending claims. See, e.g., MPEP 2146. Thus, the rejection of claims 1, 3-20, 22-44, 46-48, 50, 51, 53, 56 and 58 under 35 U.S.C. §103(a) based on Kuechle et al. should be withdrawn.

#### **Claim Amendments**

Applicant notes that all independent claims 1, 27, 29, 35, 53, and 58, are amended with this Submission to feature the encapsulated basic active ingredient as having "an activity in the range from about 55 percent to about 70 percent." New claim 59 depends from base claim 1 and features the encapsulated basic active ingredient as having "an activity in the range from about 60 percent to about 70 percent." Support for these amendments can be found in the specification as originally filed at, e.g., page 22, lines 15-32 and Example 1.

#### **Conclusion**

In view of the above-mentioned amendments and remarks, it is respectfully submitted that the above-identified application is now in condition for allowance. The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

Respectfully Submitted,

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